

The Honorable Judge Robert S. Lasnik

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SETH D. HARRIS, ACTING SECRETARY)
OF LABOR, UNITED STATES)
DEPARTMENT OF LABOR,)
Plaintiff,)
vs.)
HUANG "JACKIE" JIE, an individual, ZHAO)
"JENNY" ZENG HONG, an individual,)
PACIFIC COAST FOODS, INC., a)
Washington Corporation doing business as J &)
J MONGOLIAN GRILL, and J & J)
COMFORT ZONE, INC. doing business as)
SPA THERAPY,)
Defendants.)

No. 2:13-cv-00877 RSL
DEFENDANTS' ANSWER TO SECOND
AMENDED COMPLAINT
JURY DEMAND

Defendants Huang Jie; Zhao Zeng Hong; Pacific Coast Foods, Inc.; and J & J Comfort Zone, Inc. by and through their counsel of record, hereby answer Plaintiff's Second Amended Complaint. To the extent any allegation in Plaintiff's Second Amended Complaint is not expressly or specifically admitted, it is denied.

I

Plaintiff brings this action, pursuant to §17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C §201, et seq.), hereinafter called the Act or the FLSA, to enjoin Defendants from violating the provisions of §§15(a)(2), 15(a)(3), and 15(a)(5) of the Act, 29 U.S.C. §§ 215(a)(2),

1 215(a)(3) and 215(a)(5). Plaintiff also and separately brings this action, (1) pursuant to §16(c) of the
2 Act, 29 U.S.C. § 216(c), for the recovery of a Judgment against Defendants for unpaid minimum
3 wage and overtime compensation due Defendants' employees listed on the attached Exhibit A and
4 liquidated damages in an amount equal thereto, or, (2) in the event liquidated damages are not
5 awarded, pursuant to §17 of the Act, 29 U.S.C. § 217, for the recovery of a Judgment restraining
6 Defendants from withholding payment of minimum wage and overtime compensation due
7 Defendants' employees, plus pre-judgment interest computed thereon.

8 ANSWER:

9 This foregoing paragraph recites the names of the parties and the federal question raised by
10 Plaintiff as well as claims for damages, legal conclusions, and the relief sought. No response is
11 required. To the extent that any response is required, Defendants deny the allegations and relief
12 sought against them, deny that Plaintiff is entitled to bring this action or has any valid claim against
13 them, and deny that those listed in Exhibit A have any valid claim against them.

14
15 II

16 Jurisdiction of this action is conferred upon the Court by §17 of the Act, 29 U.S.C. § 217,
17 and by 28 U.S.C. §§1331 and 1345.

18 ANSWER:

19 This foregoing paragraph recites legal conclusions to which no response is required.

20
21 III

22 (1) Defendant Pacific Coast Foods, Inc. is a Washington corporation which does business
23 as J & J Mongolian Grill. J & J Mongolian Grill presently does business at the mall known as Bellis

1 Fair Mall, located in Bellingham, Washington, within the jurisdiction of this court.

2 ANSWER:

3 Defendants admit the allegations set forth in this Paragraph (1).

4
5 (a) Defendant Pacific Coast Foods, Inc. is wholly owned by husband and wife
6 Defendant Huang "Jackie" Jie and Defendant Zhao "Jenny" Zeng Hong.

7 ANSWER:

8 Defendants admit that Pacific Coast Foods, Inc. is owned by Jie "Jackie" Huang. Defendants
9 deny the remaining allegations in this Paragraph (1)(a).

10
11 (b) Defendant Pacific Coast Foods, Inc., at all times hereinafter mentioned, has acted
12 directly or indirectly as an employer in relation to the employees of Defendant Pacific Coast Foods,
13 Inc., within the meaning of the FLSA section 3(d), 29 U.S.C. 203(d), including to those listed on
14 Exhibit A. As an employer, among other things, Defendant Pacific Coast Foods, Inc. employed
15 employees to carry out the business of the corporation, and paid employees with checks bearing the
16 corporation's name.

17 ANSWER:

18 Defendants admit that Pacific Coast Foods, Inc. has been an employer to its employees, has
19 employed some employees to carry out its business, and has paid them through its bank account.
20 Defendants deny the remaining allegations and legal conclusions contained in this Paragraph (1)(b).

21
22 (2) Defendant J & J Comfort Zone, Inc. is a Washington corporation which does business
23 as Spa Therapy. Spa Therapy presently does business at a kiosk location and store location, both

1 separately inside the mall known as Bellis Fair Mall, located in Bellingham, Washington, within the
2 jurisdiction of this court. At times hereinafter mentioned, J & J Comfort Zone, Inc. has operated a
3 business under the name Oriental Massage, Inc. in the Alderwood Mall in Lynnwood, Washington,
4 within the jurisdiction of this court.

5 ANSWER:

6 Defendants admit J & J Comfort Zone, Inc. is a Washington corporation and has operated a
7 spa business inside the Bellis Fair Mall, located in Bellingham, Washington. Defendants deny the
8 remaining allegations contained in this Paragraph (2).

9
10 (a) Defendant J & J Comfort Zone, Inc. is wholly owned by Defendant Huang
11 “Jackie” Jie. Defendant Zhao “Jenny” Zeng Hong manages and operates the corporation.

12 ANSWER:

13 Defendants admit J & J Comfort Zone, Inc. is owned by Jie "Jackie" Huang. Defendants deny
14 the remaining allegations contained in this Paragraph (2)(a).

15
16 (b) Defendant J & J Comfort Zone, Inc., at all times hereinafter mentioned, has
17 acted directly or indirectly as an employer within the meaning of FLSA section 3(d), 29 U.S.C. §
18 203(d), in relation to the employees of Defendant J & J Comfort Zone, Inc., including to those listed
19 on Exhibit A. As an employer, among other things, Defendant J & J Comfort Zone, Inc. employed
20 employees to carry out the business of the corporation, and paid employees with checks bearing the
21 corporation’s name.

22 ANSWER:

23 Defendants admit that J & J Comfort Zone, Inc. has been an employer to its employees, has

1 employed some employees to carry out its business, and has paid them through its bank account.
2 Defendants deny the remaining allegations and all legal conclusions contained in this Paragraph
3 (2)(b).

4
5 (3) Defendant Huang “Jackie” Jie resides in or around Bellingham, Washington, with his
6 wife, Zhao “Jenny” Zeng Hong, within the jurisdiction of this court.

7 ANSWER:

8 Defendants admit that the individual (as opposed to corporate) defendants reside in or around
9 Bellingham, Washington.

10
11 (a) At all times hereinafter mentioned, Defendant Huang “Jackie” Jie has had
12 the authority to hire and fire employees, set pay rates and pay policies, develop and implement
13 recordkeeping practices and set and implement employment policies with respect to the employees
14 of both of the corporate defendants.

15 ANSWER:

16 Defendants admit that Jie Huang has had the operational control over the businesses and
17 employees of the corporate defendants.

18
19 (b) At all times hereinafter mentioned, Defendant Huang “Jackie” Jie has been
20 primarily responsible for the day to day operations at J&J Mongolian Grill including determining
21 employees’ rate of pay, and method, such as cash, check or a combination of both, by which
22 employees would be paid and determined which employment records would be created and
23 maintained.

1 ANSWER:

2 Defendants admit that Jie Huang has been primarily responsible for the day to day
3 operations at J&J Mongolian Grill.

4

5 (c) At all times hereinafter mentioned, Defendant Huang “Jackie” Jie has
6 exercised the authority to hire and fire employees, set pay rates and pay policies, develop and
7 implement recordkeeping practices and set and implement employment policies at J & J
8 Mongolian Grill including the decision to pay certain employees a lump sum monthly salary,
9 regardless of the hours worked, and pay other employees only the tips they received from
10 customers, regardless of the hours worked.

11 ANSWER:

12 Defendants admit that Jie Huang has exercised authority with respect to the employees at
13 J&J Mongolian Grill. Defendants deny the remaining allegations in this Paragraph (3)(c)

14

15 (d) At all times hereinafter mentioned, Defendant Huang “Jackie” Jie has
16 exercised the authority to hire and fire employees, set pay rates and pay policies, develop and
17 implement recordkeeping practices and set and implement employment policies at J&J Comfort
18 Zone, Inc. and Spa Therapy.

19 ANSWER:

20 Defendants admit that Jie Huang has had the operational control over the business and
21 employees of J&J Comfort Zone, Inc.

22

23 (e) At all times hereinafter mentioned, Defendant Huang “Jackie” Jie has been

1 an employer of the employees employed by both of the corporate defendants within the meaning of
2 the FLSA, 29 U.S.C. § 203(d).

3 ANSWER:

4 This foregoing paragraph recites legal conclusions to which no response is required. To the
5 extent that any response is required, it is denied.

6
7 (4) Defendant Zhao “Jenny” Zeng Hong resides in or around Bellingham, Washington,
8 with her husband, Defendant Huang “Jackie” Jie, within the jurisdiction of this court.

9 ANSWER:

10 Defendants admit that the individual (as opposed to corporate) defendants reside in or around
11 Bellingham, Washington.

12
13 (a) At all times hereinafter mentioned, Defendant Zhao “Jenny” Zeng Hong has
14 had the authority to hire and fire employees, set pay rates and pay policies, develop and implement
15 recordkeeping practices and set and implement employment policies with respect to the employees
16 of both of the corporate defendants.

17 ANSWER:

18 Defendants deny the allegations in this Paragraph (4)(a).

19
20 (b) At all times hereinafter mentioned, Defendant Zhao “Jenny” Zeng Hong has
21 been primarily responsible for the day to day operations at Spa Therapy including determining
22 employees’ rate of pay, and method, such as cash, check or a combination of both, by which
23 employees would be paid.

1 ANSWER:

2 Defendants deny the allegations in this Paragraph (4)(b).

3

4 (c) At all times hereinafter mentioned, Defendant Zhao “Jenny” Zeng Hong has
5 exercised the authority to hire and fire employees, set pay rates and pay policies, develop and
6 implement recordkeeping practices and set and implement employment policies at Spa Therapy,
7 including the decision to pay them on a commission-only basis, regardless of the number of hours
8 worked per workweek.

9 ANSWER:

10 Defendants deny the allegations in this Paragraph (4)(c).

11

12 (d) At times hereinafter mentioned, Defendant Zhao “Jenny” Zeng Hong has
13 exercised the authority to hire and fire employees, set pay rates and pay policies, develop and
14 implement recordkeeping practices and set and implement employment policies at J & J
15 Mongolian Grill.

16 ANSWER:

17 Defendants deny the allegations in this Paragraph (4)(d).

18

19 (e) At all times hereinafter mentioned, Defendant Zhao “Jenny” Zeng Hong has
20 been an employer of the employees employed by both of the corporate defendants within the
21 meaning of the FLSA, 29 U.S.C. § 203(d)

22 ANSWER:

23 This foregoing paragraph recites legal conclusions to which no response is required. To the

1 extent that any response is required, it is denied.

2
3 IV

4 (1) At all times hereinafter mentioned, Defendants have employed and are employing,
5 employees in and about their aforesaid places of business in receiving, preparing, storing,
6 handling, and selling goods and materials which have been transported, shipped, or delivered from
7 points outside the State of Washington.

8 ANSWER:

9 Defendants deny the allegations in this Paragraph (1).

10
11 (a) Employees of J & J Mongolian Grill receive, store, prepare, handle and sell
12 food products, condiments, and similar food-related goods that are shipped from out of state and/or
13 internationally.

14 ANSWER:

15 Defendants deny the allegations in this Paragraph (1)(a).

16
17 (b) Employees of Spa Therapy receive, store, prepare, handle and use items
18 which have been transported, shipped, and delivered from points outside the State of Washington
19 and internationally.

20 ANSWER:

21 Defendants deny the allegations in this Paragraph (1)(b).

22
23 (c) Employees of both facilities transact payments, including credit card payments,

1 which are processed from points outside the State of Washington, such as Citibank credit cards which
2 are processed in South Dakota, and Capital One credit cards which are processed in Utah. Said
3 employees, by reason of their activities as aforesaid, were and are engaged in commerce, and in the
4 production of goods for commerce, within the meaning of the Act.

5 ANSWER:

6 Defendants deny the allegations in this Paragraph (1)(c).

7
8 V

9 At all times hereinafter mentioned, the activities of Defendants (referred to in paragraph III,
10 IV and V above) were and are related and performed through unified operation or common control
11 for a common business purpose.

12 ANSWER:

13 Defendants deny the allegations in the foregoing paragraph.

14
15 (1) Defendant Huang “Jackie” Jie regularly manages J & J Mongolian Grill on a daily
16 basis including by directly supervising each employee and the food product being delivered, but
17 also manages Spa Therapy by directing employees to perform certain employment-related tasks
18 and sets employment policies for all employees such as hours of work, rate of pay.

19 ANSWER:

20 Defendants admit that Jie Huang has managed J&J Mongolian Grill and Spa Therapy
21 separately as two separate and distinct businesses.

22
23 (2) Defendant Zhao “Jenny” Zeng Hong regularly manages Spa Therapy on a daily

1 basis but also manages J & J Mongolian Grill including by directing employee's work, requiring
2 that specific goods and supplies be ordered, and setting employment policies for employees in
3 conjunction with Huang "Jackie" Jie, such as hours of work and rate of pay, and employment
4 records to be kept.

5 ANSWER:

6 Defendants deny the allegations in this Paragraph (2).

7
8 (3) Goods and supplies purchased by Spa Therapy are used by J & J Mongolian Grill.

9 ANSWER:

10 Defendants deny the allegations in this Paragraph (3).

11
12 (4) Defendants Huang "Jackie" Jie and Zhao "Jenny" Zeng Hong exercise unified
13 operation or common control over J & J Mongolian Grill and Spa Therapy by directing, restricting,
14 governing and administering the activities of both establishments.

15 ANSWER:

16 Defendants deny the allegations in this Paragraph (4).

17
18 (5) J & J Mongolian Grill is a service establishment providing food in the form of sit
19 down meals for customers in the Bellis Fair Mall. Spa Therapy is a service establishment
20 providing massage services for customers in the Bellis Fair Mall from a non-store kiosk and from a
21 store salon. The activities performed for the furtherance of the J & J Mongolian Grill and Spa
22 Therapy are related activities performed for a common business purpose.

23 ANSWER:

1 Defendants admit that J & J Mongolian Grill is a restaurant business and that Spa Therapy is
2 a separate spa business. Defendants deny the remaining allegations in this Paragraph (5).

3
4 (6) At all times hereinafter mentioned, Defendants were engaged in the operation of an
5 enterprise whose annual gross volume of sales made or business done is not less than \$500,000
6 (exclusive of sales taxes at the retail level stated separately) for all of the time period covered by
7 this Complaint. As such, Defendants constitute an enterprise engaged in commerce or the
8 production of goods for commerce within the meaning of §3(s)(A)(ii) of the Act, 29 U.S.C. §
9 203(s)(A)(ii).

10 ANSWER:

11 Defendants deny the allegations and legal conclusions in this Paragraph (6).

12
13 VI

14 (1) Defendants have willfully and repeatedly violated and continue to violate the
15 provisions of §§6 and 15(a)(2) of the Act, 29 U.S.C. §§ 206 and 215(a)(2), by employing many of
16 their employees engaged in commerce or in the production of goods for commerce, or employed in
17 an enterprise engaged in commerce or in the production of goods for commerce at wages less than
18 the applicable minimum hourly wage including:

19 (a) Employees were paid a lump sum regardless of the number of hours worked.
20 J & J Mongolian Grill employees received a monthly salary, which, when divided by the number
21 of hours worked, is insufficient to satisfy the federal minimum wage rate.

22 (b) Spa Therapy employees received a lump sum per day worked which was
23 comprised by dividing the tips received by all employees for each day. When the amount provided

1 to each employee is divided by the number of hours each employee worked, the resulting wage
2 rate is insufficient to satisfy the federal minimum wage rate. Some Spa Therapy employees
3 received a day rate. This day rate, when divided by the number of hours worked, is insufficient to
4 satisfy the federal minimum wage rate.

5 ANSWER:

6 Defendants deny the allegations and legal conclusions in the foregoing paragraphs under VI.

7
8 VII

9 (1) Defendants have willfully and repeatedly violated and continue to violate the
10 provisions of §§7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207, 215(a)(2), by employing their
11 employees engaged in commerce or in the production of goods for commerce, or in an enterprise
12 engaged in commerce or in the production of goods for commerce, for workweeks longer than
13 forty (40) hours without compensating said employees for all their employment in excess of 40
14 hours in such work weeks at rates not less than one and one-half the regular rates at which they
15 were employed including:

16 (a) J & J Mongolian Grill employees were paid a lump sum regardless of the
17 number of hours worked and without payment of the overtime premium.

18 (b) Spa Therapy employees were paid a lump sum regardless of the number of
19 hours worked and without payment of the overtime premium.

20 ANSWER:

21 Defendants deny the allegations and legal conclusions in the foregoing paragraphs under VII.

22
23 VIII

1 Defendants, employers subject to the Act, have willfully and repeatedly violated and
2 continue to violate the provisions of §§11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and
3 215(a)(5), by failing to maintain, keep, make available (to authorized agents of Plaintiff for inspection,
4 transcription, and/or copying), and preserve accurate records of all employees and of the wages, hours,
5 and other conditions and practices of employment maintained, as prescribed by the regulations
6 promulgated by Plaintiff pursuant to the authority granted in the Act and published in the Federal
7 Register and known as Title 29, Code of Federal Regulations, Part 516 including:

8 (a) Defendants failed to keep and maintain, inter alia, records of the times of
9 day worked by employees, the hours worked each day, the hours worked each week, the hours
10 over forty worked in a workweek, and employees' contact information. Records maintained by
11 Defendants do not accurately show the actual hours of day and hours per week any employee
12 worked, nor are there sufficient records to identify the names of all employees who performed
13 work for Defendants during the time period covered by this Complaint, thereby depriving,
14 interfering with and impeding the ability of the employees, and derivatively, the Plaintiff, to detect,
15 identify and have notice of the underpayment of wages due under the Act.

16 ANSWER:

17 Defendants deny the allegations and legal conclusions in the foregoing paragraphs under VIII.

18
19 IX

20 (1) Defendants have willfully and repeatedly violated §15(a)(3) of the Act, 29 U.S.C. §
21 215(a)(3), by discriminating and/or retaliating against employees based on Defendants' belief that
22 employees cooperated or communicated with or were planning on cooperating or communicating
23 with the Plaintiff's investigators, and by retaliating against employees based on Defendants' belief

1 that employees filed an FLSA complaint, and/or provided statements to the Plaintiff or are ready to
2 provide statements to, including testimony for, the Plaintiff.

3 (a) Such discrimination includes acts of intimidation, threats to the employees'
4 economic livelihood, and threats of physical harm. Defendants have threatened employees with
5 harm, including threats to call immigration authorities if employees spoke truthfully about their
6 wages and methods of pay.

7 ANSWER:

8 Defendants deny the allegations and legal conclusions in the foregoing paragraphs under IX.

9
10 X

11 During the relevant time period, from at least January 3, 2010 to the present, Defendants
12 willfully and repeatedly violated the Act as aforesaid in that Defendants Huang "Jackie" Jie and
13 Zhao "Jenny" Zeng Hong knew the requirements of the Act and deliberately failed to comply with
14 it. Defendants knowingly and repeatedly submitted falsified time and/or payroll records to the
15 Plaintiff. Although Defendants have installed a time clock for some or all of their employees, the
16 time clock records maintained by Defendants are falsified to show fewer hours worked than
17 employees actually worked. For work done prior to the installation of the time clock, Defendants
18 maintained handwritten time records that reflected fewer hours than employees actually worked.

19 ANSWER:

20 Defendants deny the allegations and legal conclusions in the foregoing paragraphs under X.

21
22 XI

23 During the relevant time period, including from at least January 3, 2010 to the present,

1 Defendants willfully and repeated violated and continue to violate the aforesaid provisions of the
2 Act. A judgment which enjoins and restrains such violations and includes the restraint of any
3 withholding of payment of unpaid minimum wage and overtime compensation found by the court
4 to be due to present and former employees, including employees whose identities are not presently
5 known, is expressly authorized by section 17 of the Act, 29 U.S.C. § 217.

6 ANSWER:

7 Defendants deny the allegations and legal conclusions in foregoing paragraph under XI.

8
9 XII

10 (1) Pursuant to section 16(c) of the Act, 29 U.S.C. § 216(c), the attached Exhibit A sets
11 forth the names of each employee presently known to the Plaintiff to whom back wages are owed.
12 Plaintiff's investigation disclosed that more persons worked for Defendants during the relevant
13 statutory period than appear on Defendants' incomplete and inaccurate records. In addition to the
14 names of present and former employees known to the Plaintiff, the attached Exhibit A includes an
15 estimate of the additional employees known to have worked for Defendants during the relevant
16 period whose names are not known, and a designation indicating which employer employed each
17 employee.

18 ANSWER:

19 Defendants deny the allegations and legal conclusions in the foregoing paragraph under XII.

20
21 WHEREFORE, cause having been shown, Plaintiff prays for a Judgment against
22 Defendants as follows:

23 (1) For an Order pursuant to §17 of the Act. 29 U.S.C. § 217, permanently enjoining

1 and restraining Defendants, their officers, agents, servants, employees, and all persons acting in
2 their behalf and interest from prospectively violating the provisions of §§15(a)(2) and 15(a)(5) of
3 the Act, 29 U.S.C. § 215(a)(2) and 215(a)(5); and

4 (2) For an Order:

5 (a) pursuant to section 16(c) of the Act, 29 U.S.C. § 216(c), finding Defendants
6 liable for minimum wage and overtime compensation due Defendants' employees for the relevant
7 time period including from at least January 3, 2010, and liquidated damages in an amount equal to
8 the unpaid wages, to all of Defendants' employees, including those listed in the attached Exhibit
9 A. The attached Exhibit A sets forth the names of each employee presently known to the Plaintiff
10 to whom back wages are owed as well as persons known to have been employed by the Defendants
11 but whose names are not presently known. Additional unpaid minimum wage and overtime
12 compensation and liquidated damages may be owed to certain employees presently unknown to
13 Plaintiff for the period covered by this Complaint.

14 (b) In the event liquidated damages are not awarded, pursuant to section 17 of
15 the Act, 29 U.S.C. § 217, enjoining and restraining the Defendants, their officers, agents, servants,
16 employees and those persons in active concert of participation to them, from withholding payment
17 of unpaid minimum wage and overtime found to be due Defendants' employees, and pre-judgment
18 interest at an appropriate interest rate; and

19 (3) For an Order awarding Plaintiff the fees and costs of this action; and

20 (4) For such other and further relief as may be necessary or appropriate, including
21 equitable tolling of the applicable three-year statute of limitations to redress interference with, or
22 delayed detection of, the violations of the Act by the Plaintiff due to defendants' failure to
23 maintain complete, accurate or full records as required by 29 U.S.C. §§211(c) and 215(a)(5) of the

1 Act, and/or due to Defendants' acts of intimidation towards employees.

2 ANSWER:

3 The allegations in the prayer for relief section recite legal arguments and conclusions to which
4 no response is required. To the extent that any response is required, Defendants deny each and every
5 paragraph of the prayer for relief.

6
7 **AFFIRMATIVE AND OTHER DEFENSES**

8 Having fully answered Plaintiff's Second Amended Complaint, Defendants plead separate
9 and additional affirmative and other defenses as follows:

- 10 1. Plaintiff fails to state a claim upon which relief may be granted.
- 11 2. Plaintiff fails to state facts sufficient to permit the awarding of damages.
- 12 3. Plaintiff's claims are barred in whole or in part by the applicable statute of
13 limitations.
- 14 4. Defendants did not willfully violate the FLSA, and there is a bona fide dispute as to
15 whether any additional wages are owed.
- 16 5. Plaintiff's claims are barred by the de minimis doctrine.
- 17 6. Plaintiff's claims are barred, in whole or in part, because the individuals listed in
18 Exhibit A have not sustained any injury or damage by reason of any act or omission of Defendants.
19 The individuals in Exhibit A, and all persons on whose behalf Plaintiff seeks relief, have not been
20 damaged in the sums or manner alleged, or in any sum or manner, or at all. All persons on whose
21 behalf Plaintiff seeks relief have been paid all amounts to which they were or are entitled.
- 22 7. Defendants' timekeeping and pay practices have been implemented in good faith
23 compliance with the FLSA. Without waiving the argument that Plaintiff bears the burden of proof

1 on this issue, Defendants acted in good faith and on the reasonable belief that they were acting in
2 accordance with the law. Without waiving the argument that Plaintiff bears the burden of proof on
3 this issue, individual employees created the alleged statutory violation by not reporting the hours
4 they now claim were worked but not paid, or were persuaded by Department of Labor personnel to
5 make allegations against Defendants for personal gain.

6 8. Any act or omission alleged to have given rise to Plaintiff's Second Amended
7 Complaint in this action was in good faith and based on a reasonable belief that Defendants were
8 in compliance with all applicable wage and hour requirements.

9 9. Without waiving the argument that Plaintiff bears the burden of proof on the issue
10 of knowledge, Defendants assert that they have no knowledge of hours worked other than what the
11 employees self-reported. Accordingly, no additional payment is warranted.

12 10. Plaintiff's claims are barred by the doctrines of avoidable consequences, estoppel,
13 unclean hands, waiver, and mitigation. Without waiving the argument that Plaintiff bears the
14 burden of proof on each of these issues, Defendants assert that the individual employees failed to
15 avoid the consequences of alleged unpaid work, benefited themselves financially in addition to
16 receiving their wages at the expense of Defendants, and failed to mitigate their alleged damages by
17 properly submitting their time worked. Individuals waived any claims by not reporting the hours
18 they now claim were worked but not paid. Plaintiff is estopped from asserting claims for
19 individuals who did not report the hours they now claim were worked but not paid, and/or who did
20 not actually work the alleged unpaid hours for Defendants.

21 11. It would be inequitable and unjust for Plaintiff to maintain this action against
22 Defendants.

23 12. Defendants reserve the right to allege additional defenses as they may become

1 known during discovery, and to amend their Answer accordingly.

2 **JURY DEMAND**

3 Defendants hereby respectfully demand trial by jury on all issues so triable. FRCP 38.

4 **DEFENDANTS' PRAYER FOR RELIEF**

5 WHEREFORE, Defendants pray for relief as follows:

6 1. Plaintiff and all persons listed in Exhibit A take nothing in this action;

7 2. Plaintiff's action be dismissed in its entirety with prejudice and without costs or fees
8 of any kind to Plaintiff;

9 3. Defendants recover their costs of suit incurred herein, including reasonable
10 attorneys' fees; under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412(d) or other
11 authority; and

12 4. Defendants be granted such other and further relief as the Court may deem just and
13 proper.

14 Dated this 15th day of January, 2014.

15 LAW OFFICES OF VIC S. LAM, PS

16 /s/ Vic S. Lam
17 Vic S. Lam, WSBA #25100
Attorneys for the Defendants

18 **CERTIFICATE OF SERVICE**

19 I HEREBY CERTIFY that on January 15, 2014, I electronically filed the foregoing Answer
20 with the Clerk of the Court using the CM/ECF system which will send notification of such filing to
all counsel of record.

21 Dated this 15th day of January, 2014.

22 /s/ Vic S. Lam
23 Vic S. Lam, WSBA #25100